

**ORIGINAL**

**TITLE 170 INDIANA UTILITY ~~REGULATORY COMMISSION~~**

**Final Rule**  
LSA Document #99-233(F)

**DIGEST**

Adds 170 IAC 7-7 to create an expedited process for resolving disputes between telecommunications carriers. Effective 30 days after filing with the secretary of state.

**170 IAC 7-7**

SECTION 1. 170 IAC 7-7 IS ADDED TO READ AS FOLLOWS:

**Rule 7. Expedited Procedure for Resolving Interconnection Disputes Between Telecommunications Carriers**

**170 IAC 7-7-1 Policy and scope**

**Authority:** IC 8-1-1-3

**Affected:** IC 8-1-2-4; IC 8-1-2-88

Sec. 1. (a) This rule is intended to establish an expedited procedure for resolving interconnection disputes between telecommunications carriers that arise from the Telecommunications Act of 1996, 47 U.S.C. § 251 et seq. **Only those disputes that directly affect the ability of a party to provide uninterrupted service to its customers or preclude the provisioning of any service, functionality, or network element are entitled to expedited review.**

**(b) Expedited review pursuant to this rule shall not be used unless the parties have exhausted all dispute resolution procedures included in the commission approved interconnection agreement that is the subject of the dispute, if any. Any binding dispute resolution made pursuant to a commission approved interconnection agreement cannot be challenged under this rule.**

**(c) Expedited review pursuant to this rule shall be granted at the commission's sole discretion. An order dismissing a party's request for expedited review pursuant to this rule will be issued without prejudice for leave to file a formal complaint under I.C. 8-1-2-54 and related statutes.**

**(d) To the extent that this rule does not address issues of practice and procedure, 170 IAC 1-1.1 applies. (*Indiana Utility Regulatory Commission; 170 IAC 7-7-1*)**

## **170 IAC 7-7-2 Definitions**

**Authority:** IC 8-1-1-3

**Affected:** IC 8-1-2-4; IC 8-1-2-88

Sec. 2. The following definitions apply throughout this rule:

(1) "Complainant" means any **telecommunications** utility ~~or corporation, company, partnership, individual, or association of individuals~~ **that files a complaint** seeking relief from the commission ~~that initiates a formal complaint or formally requests the commission to initiate an investigation of a utility under Indiana law pursuant to this rule.~~

(2) "Interconnection agreement" means an agreement executed pursuant to 47 U.S.C. § 252(i) §§ **251 and 252**, including interconnection agreements, resale agreements, agreements for the purchase or lease of unbundled network elements, or statements of generally available terms and conditions, whether those agreements were entered into through negotiation, settlement, arbitration, or adoption of a prior agreement.

(3) "Respondent" means any **telecommunications utility** ~~person or entity required to be named as a respondent by statute, rule or order of the commission, or required to respond to any order of the commission, or against whom an investigation is initiated on motion of a complainant or on the commission's own motion~~ **a complaint is filed pursuant to this rule.**

*(Indiana Utility Regulatory Commission; 170 IAC 7-7-2)*

## **170 IAC 7-7-3 Notice**

**Authority:** IC 8-1-1-3

**Affected:** IC 8-1-2-58; IC 8-1-2-69

Sec. 3. (a) At least ten (10) **business** days prior to filing a complaint with the commission, a complainant shall serve written notice upon all parties to the dispute **and to the commission's telecommunications division director** that the complainant intends to file a complaint alleging a violation of a commission approved interconnection agreement or an interconnection-related commission order.

(b) The written notice to the respondent shall identify the provisions of the order or interconnection agreement that the complainant alleges have been violated by the respondent, and the specific acts or omissions causing the violation. **The written notice to respondent shall also identify the circumstances that directly affect the complainant's ability to provide uninterrupted service to its customers or preclude the provisioning of any service, functionality, or network element which entitle the dispute to expedited review.**

(c) If the complainant fails to serve written notice of its intent to file a complaint as required in subsection (a), the presiding officer may extend any deadline imposed by this rule. *(Indiana Utility Regulatory Commission; 170 IAC 7-7-3)*

#### **170 IAC 7-7-4 Complaint**

**Authority:** IC 8-1-1-3

**Affected:** IC 8-1-2-58; IC 8-1-2-69

Sec. 4. (a) The complaint shall contain the following:

(1) A detailed statement of the facts **supporting the complainant's position and** demonstrating that despite good faith efforts, the complainant was unable to resolve its dispute with the respondent. **The statement of facts must be:**

**(A) supported by testimony or affidavits; and**

**(B) made by persons with personal knowledge of the relevant facts.**

(2) A statement of facts specifying each violation of the commission order or commission approved interconnection agreement committed by the respondent.

(3) A statement of applicable law, supported by appropriate citations.

(4) A ~~motion seeking affirmative relief must indicate~~ **statement indicating** whether the remedy sought is consistent with the dispute resolution provisions of any interconnection agreement between the parties or other commission order, if applicable.

(5) An affirmation that the complainant provided the written notice required in section 3(a) of this rule.

(6) The name, address, and telephone number of the complainant's attorney, including local counsel.

**(7) A copy of the interconnection agreement or the portion of the interconnection agreement that the complainant contends was or is being violated. If a copy of the entire interconnection agreement is provided, the complainant must specify the provisions at issue. If the interconnection agreement was adopted as a prior agreement or a portion of a prior agreement, the complaint must also indicate the provisions adopted in that agreement.**

(b) The complainant may amend its ~~petition~~ **complaint** upon discovery of facts or circumstances unknown or unavailable to the complainant at the time the complaint was filed. **Upon amendment of a complaint, the procedural schedule shall be adjusted at the discretion of the presiding officer.**

(c) A complaint filed pursuant to this rule shall be assigned a cause number that corresponds to the interconnection agreement between the telecommunications carriers followed by the suffix "RD", and a sequential number to designate each dispute. For example, if the complaint involves the first dispute over an interconnection agreement that was approved by the commission in cause number 12345, the cause number for the dispute will be 12345-RD-01. (*Indiana Utility Regulatory Commission; 170 IAC 7-7-4*)

#### **170 IAC 7-7-5 Expedited procedural schedule**

**Authority:** IC 8-1-1-3

**Affected:** IC 8-1-2-58; IC 8-1-2-69

Sec. 5. (a) Upon the filing of a complaint pursuant to this rule, the presiding officer shall

immediately fix a procedural schedule that includes, but is not limited to, the following:

- (1) Deadlines for the filing of all pleadings and briefs.
- (2) The date for a settlement conference.
- (3) The date for an evidentiary hearing.
- (4) The deadline for the issuance of a commission order.

**(b) A party may file a request for discovery with a complaint, answer, or motion to intervene. Discovery requests shall be reasonable and limited to matters directly at issue. Parties shall respond to discovery requests within forty-eight (48) hours, unless another time is set by the presiding officer.**

*(Indiana Utility Regulatory Commission; 170 IAC 7-7-5)*

#### **170 IAC 7-7-6 Service of complaint**

**Authority: IC 8-1-1-3**

**Affected: IC 8-1-2-58; IC 8-1-2-69**

Sec. 6. ~~(a)~~ The complainant shall ~~deliver~~ serve a copy of the complaint to the respondent, the respondent's authorized representative, attorney of record, or designated agent for service of process on the same day the complaint is filed with the commission. ~~Service may be made by hand delivery or overnight mail.~~

~~(b) The complainant shall also serve the complaint upon the following:~~

- ~~(1) If the dispute involves a commission order, to all attorneys of record in the cause.~~
- ~~(2) If the dispute involves an interconnection agreement, to all parties thereto.~~

*(Indiana Utility Regulatory Commission; 170 IAC 7-7-6)*

#### **170 IAC 7-7-7 Answer**

**Authority: IC 8-1-1-3**

**Affected: IC 8-1-2-58; IC 8-1-2-69**

Sec. 7. (a) An answer to the complaint shall be filed within ten (10) **business** days after service of the complaint.

(b) The answer shall contain the following:

- (1) A response to each allegation in the complaint, setting forth any affirmative defenses.
- (2) A statement of the facts supporting the respondent's position. The statement of facts must be:
  - (A) supported by testimony or affidavits; and
  - (B) made by persons with personal knowledge of the relevant facts.
- (3) A statement of applicable law, supported by appropriate citations.
- (4) The name, address, and telephone number of the respondent's attorney, including local counsel.

(c) A response to any motion filed by the complainant shall be filed as a separate document.

(d) The respondent may also file motions seeking affirmative relief.

(e) The respondent may file a motion subsequent to the filing of the answer based upon facts or circumstances unknown or unavailable to the respondent at the time the answer was filed.

(f) The respondent shall serve a copy of the answer and any other motions or responses on the complainant's attorney, as listed in the complaint, or the person who signed the complaint, if the complainant has no attorney. Service may be made by hand delivery or overnight mail.

~~(g) The respondent shall also serve the answer upon the following:~~

~~(1) If the dispute involves a commission order, upon all attorneys of record in the cause.~~

~~(2) If the dispute involves an interconnection agreement, upon all parties thereto.~~

~~(h)~~ (g) Service to all parties must be made on the same day the answer is filed with the commission.

~~(i)~~ (h) Any allegations raised in the complaint but not addressed in the answer shall be deemed admitted. (*Indiana Utility Regulatory Commission; 170 IAC 7-7-7*)

#### **170 IAC 7-7-8 Reply**

**Authority:** IC 8-1-1-3

**Affected:** IC 8-1-2-58; IC 8-1-2-69

Sec. 8. (a) The complainant must reply to an answer that contains affirmative defenses.

(b) The reply must be filed with the commission no later than ten (10) **business** days after the answer is filed.

(c) The complainant shall serve the reply upon all parties on the same day the reply is filed with the commission.

(d) If the reply contains new facts or legal issues not raised in the complaint, the reply shall comply with section 4(a)(2) through 4(a)(4) of this rule. **In addition, if the reply contains new facts or legal issues not raised in the original complaint, the presiding officer may set a new procedural schedule pursuant to Section 5 of this rule.** (*Indiana Utility Regulatory Commission; 170 IAC 7-7-8*)

#### **170 IAC 7-7-9 Settlement conference**

**Authority:** IC 8-1-1-3

**Affected:** IC 8-1-2-58; IC 8-1-2-69

Sec. 9. (a) A settlement conference shall be held no later than ten (10) business days from the date the final pleading is filed.

(b) Representatives of all parties shall attend the settlement conference unless excused by the presiding officer. Parties should be fully prepared to discuss all matters involved in the proceedings, both procedural and substantive, and be fully authorized to make commitments with respect to settlement.

**(c) Only the complainant and the respondent may participate in the settlement conference; however, At at the discretion of the presiding officer, testimonial commission staff may be directed to attend and participate in the settlement conference and to file a report that contains recommendations for resolution of the dispute.**

(d) The settlement conference shall be conducted as an informal meeting and will not be on the record. ~~Only parties of record and testimonial commission staff may participate in the settlement conference.~~ Settlement discussions are privileged **and confidential** and will not be subject to discovery and cross-examination **or be presented as evidence before the commission or any court of competent jurisdiction.**

**(e) If parties reach a settlement agreement in principle, the parties shall memorialize the agreement in writing before ending settlement discussions.** If an agreement resolving the dispute is reached at the settlement conference, and if any party to the agreement desires a commission order approving the agreement, the parties are required to jointly file the written settlement agreement with the commission within ten (10) **business** days of the settlement conference. (*Indiana Utility Regulatory Commission; 170 IAC 7-7-9*)

#### **170 IAC 7-7-10 Evidentiary hearing**

**Authority: IC 8-1-1-3**

**Affected: IC 8-1-2-58; IC 8-1-2-69**

Sec. 10. (a) If no settlement is reached, an evidentiary hearing will begin no later than forty-five (45) **business** days after the complaint is filed with the commission.

(b) The presiding officer has discretion to decide how a proceeding shall be conducted pursuant to this rule, including, but not limited to, the power to do the following:

- (1) Limit the number of exhibits and witnesses and the time for their presentation.
- (2) Limit the examination of witnesses.
- (3) Require the parties to submit additional information necessary for a fair and expeditious resolution of the case.
- (4) Require the parties to submit a joint statement listing what facts, if any, have been stipulated to, what facts remain in dispute, what legal issues are in dispute, and a brief summary of the position of the parties on each issue.
- (5) Bifurcate the proceeding for more efficient consideration of the issues.
- (6) Consolidate two (2) or more expedited review proceedings filed pursuant to this rule for more efficient consideration of the issues.**
- (7) Continue the evidentiary hearing for good cause shown.**

**(8) Permit other parties who have a direct interest in the interconnection dispute and the specific facts alleged in the complaint to intervene on a limited basis at the presiding officer's discretion. Petitions to intervene must be received by the commission within seven (7) business days of the filing of the complaint. Upon granting a request for intervention, the expedited procedural schedule may be modified at the presiding officer's discretion in accordance with section 5 of this rule [170 IAC 7-7-5] to allow the intervenor to submit evidence and participate in the evidentiary hearing.**

*(Indiana Utility Regulatory Commission; 170 IAC 7-7-10)*

**170 IAC 7-7-11 Order**

**Authority: IC 8-1-1-3**


**Affected: IC 8-1-2-58; IC 8-1-2-69**

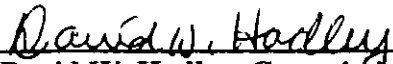
Sec. 11. The commission shall render a disposition on any complaint filed pursuant to this rule within sixty (60) **business** days after the complaint is filed. The commission may extend this deadline for good cause. *(Indiana Utility Regulatory Commission; 170 IAC 7-7-11)*

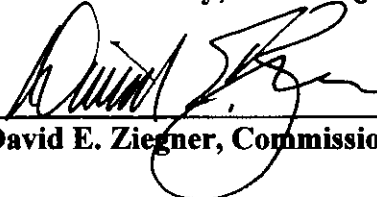
**INDIANA UTILITY REGULATORY COMMISSION**  
**Approval of Adoption of Rule 170 IAC 7-7**  
**LSA Document #99-233(F)**  
**IURC RM 99-08**

Upon prior publication of notice, and public hearing having been held on April 27, 2000, at 9:30 a.m., EST, as required by the provisions of I.C. 4-22-2-1, *et seq.*, the Indiana Utility Regulatory Commission, on September 13, 2000, at 1:30 p.m., EST in Room E306, Indiana Government Center-South, Indianapolis, Indiana at which time a majority of members of said Commission were present, adopted the foregoing rule.

The Secretary is hereby directed to submit five (5) copies of the aforesaid rules to the Attorney General of Indiana, for his approval of same, and thereafter file one (1) duplicate approved copy with the Secretary of State.

  
William D. McCarty, Chairman

  
David W. Hadley, Commissioner

  
David E. Ziegner, Commissioner

  
Camie J. Swanson-Hull, Commissioner

  
Judith G. Ripley, Commissioner

ATTEST:

  
Joseph Sutherland, Secretary to the Commission

Date:

SEP 20 2000



**Approval of the Adoption of Rule**


**170 IAC 7-7**

**LSA Document #99-233(F)**

**IURC RM 99-08**

**Approved as to legality,**

**today:** 11-8-00


  
**KAREN M. FREEMAN-WILSON**  
**Attorney General of Indiana**

**Approved,**

**today:** 11/22/00

  
**FRANK O'BANNON**  
**Governor of Indiana**

**Filed, today:** 11/27/00  
**9:36am**

  
**SUE ANNE GILROY** **CH**  
**Secretary of State**